

## **PREPARING A LEGISLATIVE AGENDA FOR RESTORING COMPETITIVENESS**

Alan Taylor 03-17-09

*"The DEQ is and has long been an embarrassment to our state. Their continual harassment of our citizens, impeding of economic growth, defiance of the people's elected representatives, and blatant disregard for the law is common knowledge these days. In addition to this behavior, in most cases they have not actually improved the environmental quality of our state, their only true role. The focus of the department seems to be less on making positive strides, and more on driving people out of our state."*

Brian Palmer, State Representative, 36<sup>th</sup> District 10-06-08

### **Background:**

Michigan has been in a multiple six year decline in economic output. The United States economy is recessive; however, Michigan qualifies for the economists' definition of a "depression." The state does not find itself in this inevitable and challenging position because of it lacks natural resources, industrial infrastructure or transportation infrastructure. Rather, Michigan's current economic problems are a direct result of public policy that has when compared to other states, created an uncompetitive investment and business environment.

One of the most significant governmental issues facing Michigan's economic recovery is that of onerous state environmental regulations that are being applied to both existing and potential business' private property by overzealous and inconsistent regulators of the Michigan Department of Environmental Quality. Investors and business react to uncertainty from regulators as a vampire to a cross.

### **The Problem**

In contrast to 48 other states, Michigan (and New Jersey) has chosen to assume the authority for issuing wetland permits under delegation from the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. Initially, Michigan sought to assume federal wetland permitting in the state for the purpose of streamlining and tailoring regulations to expedite the permitting process. Michigan regulators did not remain true to this goal and with costs of Michigan regulatory bureaucracy ballooning federal funding promised to Michigan for that purpose never cover cost. Although the rationale for state oversight may have made sense 30 years ago, times have changed. Michigan's permitting process has become much more expensive, much less predictable and far slower than permitting done by the U.S. Army Corps of Engineers, leaving Michigan in an extremely uncompetitive position when compared to other states.

Michigan also operates several other federal environmental programs under delegation from the U.S. EPA. These programs include the Superfund Act, (CERCLA), Hazardous Waste Act (RCRA), Clean Water Act, and Clean Air Act. While most states operate some or even all of these programs, no state is required to do so. If a state chooses not to operate a federal environmental program, the U.S. EPA assumes responsibility for that program in that particular state. Federal funding for state-delegated programs declining in recent years and now generally makes up less than one-third of the cost to operate these programs; the remaining cost coming from the state's general fund dollars and permit fees.

**The Solution:**

Piecemeal attempts at legislation to correct or mitigate the MDEQ's unwarranted actions have been made. Unfortunately, as well-intentioned as legislator's efforts have been, nothing has curtailed MDEQ's excessive oversight and regulations that are seriously hurting individuals and business owners across the state. Add to that the untold number of businesses who have not or will not locate to Michigan because of MDEQ burdensome regulations (e.g. Toyota and Volkswagon motor companies).

The legislature can act to assure Michigan's competitiveness by eliminating all areas of environmental statutes which replicate federal law and return all oversight authority of Michigan's environment in these areas back to the federal government. And should start with the most burdensome wetland regulations. This will do more to return Michigan's competitiveness with other states than perhaps any other change in public policy. In addition, the cost savings to the state in this time of economic depression will be significant.

To make Michigan competitive, we need specific legislation that would simply say that the state:

Return environmental regulatory oversight authority of the following federal programs back to the U.S. EPA and the U.S. Army Corps of Engineers by December 31, 2009 and prohibit the MDEQ from spending any funds to administer these programs from federal funding after December 31, 2009.

- Clean Water Act \*\*\* MOST IMPORTANT AND SIGNIFICANT
- Federal Superfund Program (CERCLA)
- Hazardous Waste (RCRA)
- Clean Air Act

A suggested bill to return the Wetland portion of the Clean Water Act is attached.

Making these changes WILL restore Michigan's economic competitiveness create substantial cost savings for the state budget, and return Michigan back on the path of economic prosperity.

Examples of the MDEQ hindering Michigan's competitiveness:

- a). The MDEQ is inconsistent in the application of the rules. It admits this and says, "The process is not black and white."
- b). The MDEQ lags behind the EPA and Army Corps of Engineers in the efficiency and speed of its permitting process. Coupled with inconsistent rulings, the MDEQ's permit processing with outdated computers, programming and field equipment creates backlogs and mistakes that severely affect Michigan's businesses and landowners.

One example: A couple in Presque Isle purchased property on Lake Huron for the purpose of building a retirement home, but the MDEQ denied a permit to build a driveway over a small area of wetlands. These are typically routine requests and subsequent to the first denial, they drafted a second permit application. The newly proposed driveway would have a smaller impact (7/100 of an acre in total size) than the first proposal, while servicing two lots. This permit was also denied by the DEQ. The couple has spent more than eight years of their retirement fighting legal battles over this driveway and is currently in court over the second permit application.

- c). The MDEQ's requirements go beyond federal mandates. After frustration with the MDEQ's insistence on differing engineering criteria for the dredging of the Saginaw River, and under the threat of a lawsuit, the U.S Army Corps of Engineers almost dropped the project - and its \$2 million of federal funding. As quoted in the *Bay City Times*, Saginaw County Works Commissioner Jim Koski stated, "We have almost \$4 million to work on the Saginaw River this year, based on a lot of hard work from a lot of people in Congress and with the Corps of Engineers. If the DEQ wants to stand in the way of that, then they've got to live with that." ... "It's always, 'because I say so,'" he said of the DEQ. "They're bullies." (*Bay City Times*, April 9, 2008 "Fight between DEQ, Army Corps over Saginaw River dredging spoils site.")

A subsequent editorial by the *Saginaw News* went on record saying "And that's what makes the DEQ's intransigence so maddening. It's putting a questionable safety mandate ahead of the certainty of a safety guarantee. In a callous and obstinate manner, the DEQ is toying with the lives and livelihoods in a part of Michigan that is absolutely desperate for economic opportunity." (*Saginaw News*, April 21, 2008 "Editorial: Dredging delays hurt")

Later, the project moved ahead only after Lt. Governor Cherry stepped in to mediate and the MDEQ dropped its requirements.

- d). The MDEQ staff has demonstrated its lack of professionalism and knowledge on environmental regulations, resulting in frustrating inconsistencies in its applications of regulations. For example, when the MDEQ restricted the application of an herbicide to control invasive aquatic vegetation to once every three years, it minimized the clearing, reducing the quality of the areas affected and allowing the targeted plant life to build immunity to the herbicide. As a result, the plant's increased invasiveness now can only be controlled with more herbicide than would have been needed if the regular application had been allowed in the first place.

- e). The MDEQ has been known to consistently favor special interest environmental groups over business. For example, in the discovery process of a high-profile Dow Chemical lawsuit, it was revealed through e-mails that the MDEQ corresponded with special interest environmental groups regarding the environmental positions the MDEQ should and, eventually, did take.
- f). The MDEQ ignored its own requirements when, after a public hearing, it rejected a discharge permit request by the Bustorf Dairy's attorney, who was quoted in the *Kalamazoo Gazette*, as saying, "Rather than complying with the law, this decision was clearly driven by DEQ's political agenda." (April 2, 2008 "Dairy farm to appeal permit denial") The MDEQ will spend more money on litigation and another business will suffer. Recently the reversed it's position after political pressure, justifying granting the permit on "economic grounds".